

Order Under Appeal



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

file copy

DEPARTMENT ORDER

IN THE MATTER OF

BORALEX ASHLAND, LP)
ASHLAND, AROOSTOOK COUNTY, MAINE) SOLID WASTE ORDER
WOODASH UTILIZATION PROGRAM LICENSE)
#S-021177-SE-G-M (APPROVAL WITH CONDITIONS)) MINOR REVISION

Pursuant to the provisions of the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§ 1301 to 1319-Y, and *Agronomic Utilization of Residuals*, 06-096 CMR 419 (last amended December 19, 1999), and the *Solid Waste Management Rules: Water Quality Monitoring, Leachate Monitoring and Waste Characterization*, 06-096 CMR 405 (last amended June 16, 2006, and the *Solid Waste Management Rules: Beneficial Use of Solid Wastes*, 06-096 CMR 418 (last amended June 16, 2006), the Department of Environmental Protection (Department) has considered the application of BORALEX ASHLAND, LP (Boralex Ashland or applicant) with its supportive data and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

A. Application: Boralex Ashland, LP requests approval to modify Department Order #S-021177-SE-B-R.

B. History:

- (1) On November 4, 1993, the Department issued Order #S-021177-SE-A-N which approved a woodash utilization program for Northeast Empire Limited Partnership #2 (NELP#2).
- (2) On May 9, 2002, the Department issued Order #S-021177-SX-D-T which approved the transfer of NELP#2's Department-issued licenses to Boralex Ashland, Inc.
- (3) On June 21, 2002, the Department issued Order #S-021177-SE-B-R which renewed Boralex Ashland's woodash utilization program license, and approved the transition of their program into the new requirements of 06-096 CMR 419, which replaced *Rules for Land Application of Sludge and Residuals*, 06-096 CMR 567 (last amended January 4, 1994, repealed and replaced July 19, 1999).

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- (4) On January 8, 2007, the Department issued Order #S-021177-SX-H-T which approved the transfer of Boralex Ashland's Department-issued licenses to Boralex Ashland, LP.

C. Application Summary: Boralex Ashland proposes to: modify its wood ash utilization program license to allow continued distribution of wood ash having a concentration exceeding the screening standard in 06-096 CMR 418 Appendix A for manganese; apply wood ash at a rate based on the liming requirements of the soil or on the crop uptake rate for phosphorus—whichever is most limiting--and not on the potassium requirements of the soil; and, not analyze for soil fertility or for (background) manganese on farmland when woodash is distributed through direct sales in bulk form.

2. FACILITY DESCRIPTION

Boralex Ashland operates a 39.6-megawatt wood-fired electricity generation facility in Ashland, Maine that generates 9,500 to 14,500 conditioned (35% moisture) tons of woodash annually. The woodash is conveyed to an enclosed ash silo, metered out of the silo and conditioned to 35% moisture, and discharged to and stored in a building at the facility. The woodash is periodically removed from the storage building and transported to utilization sites where it is directly land spread or temporarily field stacked when ground conditions are unsuitable for landspreading.

3. RESIDUAL SUITABILITY

The applicant has performed initial analyses for total inorganic compounds in accordance with 06-096 CMR 405(6)(D)(2)(d). The results indicate that all are within the applicable limits in 06-096 CMR 419, Table 419.4, and 06-096 CMR 418, Appendix A, except that the woodash frequently exceeds the screening standard in 06-096 CMR 418, Appendix A for manganese.

4. SAMPLING AND ANALYTICAL WORK PLAN

The applicant has submitted a Sampling and Analytical Work Plan. However, the Department finds that the applicant should revise the sampling and analytical work plan to reflect the changes approved by the Department in this Order. A copy of the revised plan should be submitted to the Department for review and approval within thirty (30) days of the issuance of this Order, including

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identification and selection rationale of parameters to be analyzed for, the sample size and sampling frequency, and procedures for decontamination of sampling equipment.

5. AGRONOMIC BENEFIT

The applicant has prior approval to distribute woodash as a liming agent and as a potassium source for agricultural fields. The applicant has performed residual analyses for baseline nutrients, total inorganic compounds, and calcium carbonate equivalents (CCE) in accordance with 06-096 CMR 405 (D)(2)(a), (c) and (d). Results of these analyses indicate that the woodash has an average 31.6% CCE and a potassium concentration of 2.8%.

The applicant proposes to apply woodash at a rate based upon the liming requirements of the soil, as directed by soil test reports, and to eliminate the requirement in Department Order #S-021177-SE-B-R limiting the loading rate based on the potassium requirements of the soil.

The applicant will continue to reduce application in those areas sensitive to phosphorus loading (e.g., direct watersheds of water bodies most at risk from new development) to a rate no greater than necessary to supply the phosphorus requirements of the target crop. Phosphorus need will be calculated based on soil test reports, actual availability of this nutrient in the woodash, crop uptake rate, and application of other phosphorus-containing fertilizers.

The Department finds the applicant's proposal satisfactory provided woodash application rates are based on the liming requirement of site soils or on the crop uptake rate for phosphorus —whichever is most limiting—and that application rates not exceed a maximum of two tons of CCE per acre per year if top-dressed, and three tons of CCE if incorporated.

6. RISK MANAGEMENT

- A. Manganese: The applicant has performed analyses for total inorganic compounds in accordance with 06-096 CMR 419(4)(A) and (B), 06-096 CMR 419(7)(A)(2), (3) and (4), and 06-096 CMR 405(6)(D)(2)(d). The results indicate that all are within the applicable limits in 06-096 CMR 419, Table 419.4 and in 06-096 CMR 418, Appendix A, except for manganese, which frequently exceeds the screening standard in 06-096 CMR 418, Appendix A.

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06-096 CMR 419(7) requires that any generator seeking to undertake a utilization activity to provide a physical and chemical description of the residual(s) obtained in accordance with 06-096 CMR 405(6), and a description of potential risks posed by the utilization program and an appropriate management strategy to mitigate the risks, including a demonstration that the residual meets the screening standards for hazardous substances other than metals in 06-096 CMR 418, Appendix A.

06-096 CMR 419(5) requires that application of residuals at a utilization site be suspended when it is determined that the concentration in 06-096 CMR 418, Appendix A of any parameter other than metals has been exceeded in the site soil.

In reviewing the information and standards relative to and since the issuance of Department Order #S-021177-SE-B-R, Department staff determined that the wood ash frequently exceeds the screening standard of 2,250 mg/kg in 06-096 CMR 418, Appendix A for manganese. From 1999 to present, the concentration of manganese in the ash has ranged from 1,650 mg/kg to 9,880 mg/kg.

Consequently, the Department notified the applicant of the need to provide a description of potential risks at utilization sites posed by their utilization program relative to manganese, and an appropriate management strategy to mitigate those risks, as required in 06-096 CMR 419(7)(A)(4), and relative to 06-096 CMR 419(5)(A)(6). Using the calculations in 06-096 CMR 419, Appendix A, the applicant demonstrated that at a maximum residual loading rate of not more than three tons of calcium carbonate equivalents per year for seventy (70) years, the estimated soil pollutant concentration increase (SI) in site soils would not exceed the screening standard in 06-096 CMR 418, Appendix A for manganese. The applicant also stated that application rates are limited by other factors such as existing soil conditions, residual potassium and phosphorus levels, and typical application of woodash does not occur on an annual basis. The applicant proposes to reduce the useful life of any one site to no more than fifty (50) consecutive years. The applicant also proposes that should the concentration of manganese increase, the useful life of any site will be adjusted downward to ensure that the SI does not exceed the screening standard in 06-096 CMR 418, Appendix A for manganese.

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The Department recognizes that application rates are limited by other factors such as existing soil conditions, residual potassium and phosphorus levels, and that typical application of wood ash does not occur on an annual basis. Manganese is a micronutrient which is essential for photosynthesis and nitrogen metabolism in crops and that wood ash spreading is discontinued when soil pH reaches optimum levels and, therefore, it is not likely that the wood ash at a maximum pollutant concentration would be used at any utilization site every year for up to fifty (50) years.

The Department has observed that analyses performed on some soils in the Aroostook County area indicate background manganese concentrations of up to 2,000 mg/kg at some non(wood ash)-amended sites. Loading rate calculations performed by the Department indicate that at a maximum manganese concentration of 9,880 mg/kg and a maximum residual loading rate of not more than three (3) tons CCE per acre per year for fifty (50) years, the SI is 1,660 mg/kg. The SI plus a background concentration of 2,000 mg/kg in soil exceeds the screening standard of 2,250 mg/kg for manganese in 06-096 CMR 418, Appendix A.

Due to reports of relatively high and variable background concentrations of manganese in some regional soils, the Department finds that prior to using any site for the land application of wood ash exceeding the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese, the applicant should representatively sample and analyze the site soil once for (background) manganese. The results of the soil analysis should be reported to the Department within thirty (30) days of receipt by the applicant.

The Department also finds that the applicant should estimate the SI in accordance with the calculations in 06-096 CMR 419, Appendix A(2)(C) and limit use of the site such that the combined total of the SI plus the soil background concentration does not exceed the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese. Should the concentration of manganese in the wood ash increase, the applicant should adjust the useful life of the site downward to ensure that the SI plus the soil background concentration does not exceed the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese.

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- B. Bulk Sales: The applicant proposes to distribute woodash as a lime substitute through direct sales in bulk form. The applicant has submitted a copy of Product Information Literature that clearly states the nutrients contained in Boralex Ashland woodash and Best Management Practices sheet that provides guidance on setbacks, storage and loading rate limitations when spreading and storing woodash. This information will be provided to woodash recipients to assist in calculating quantities of woodash needed for soil and crop nutrient management, and in woodash handling and storage. The applicant proposes to not routinely analyze soil on farmland when woodash is distributed through direct sales in bulk form. The applicant states that farmers have an economic incentive to conduct soil tests, and will only purchase the amount of woodash needed to properly adjust soil pH and to improve soil fertility.

The Department finds that this is acceptable, provided the woodash does not exceed the applicable screening standards in 06-096 CMR 419, Table 419.4 for heavy metals, the wood ash does not exceed the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese, the applicant does not distribute more bulk woodash to end users in a given year than can be utilized at their site in that year, and that at any site without a site-specific license, wood ash is not stored for more than two (2) years.

7. FINANCIAL AND TECHNICAL ABILITY

- A. Financial Ability: The applicant has estimated that the cost of operating the land application program to be approximately \$200,000.00 annually. The applicant submitted evidence that Boralex Ashland has assets available to operate the program in a manner consistent with State environmental standards.
- B. Technical Ability: The applicant has retained the services of New England Organics. NEO has extensive experience with management of woodash and other residual land application projects throughout New England.

8. PROTECTION OF THE WATERS OF THE STATE

The Department finds that limiting woodash spreading to established agricultural sites will meet the intent of the setbacks required under 06-096 CMR 419(4)(G)

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and 06-096 CMR 400(4)(E)(1)(b). The applicant has submitted a copy of Best Management Practices (BMPs) to be followed by recipients/end users of woodash. The BMP sheet provides a list and/or description of setbacks to be observed when spreading and storing woodash. The information provided is also adequate to ensure that storage sites will meet the general siting and design standards in 06-096 CMR 419(12)(A) and (B) for storage and to minimize surface water contact.

9. NUISANCES AND AIR QUALITY

Woodash does not produce objectionable odors during handling and is unlikely to cause odor nuisances at the site where it is handled. The woodash will be quenched with water to prevent fires and to assure that no dust nuisances are created.

Woodash utilization and distribution will not generate noise in excess of that generated during normal operations at any site proposed or currently used for woodash utilization.

10. TRAFFIC

The applicant does not propose any change that would increase traffic.

11. UTILITIES

No new utilities are required for any of the activities proposed by the applicant.

12. EROSION

No soil disturbance activities are proposed by the applicant.

13. FLOODING

The applicant does not propose any activity that would affect the flooding potential of any area.

14. RECORD KEEPING AND REPORTING

- A. Record Keeping: The Department finds that the applicant should maintain records of woodash analyses, soil sampling results, records of amounts

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and dates of woodash spread on various fields, and the Department's Annual Ash Utilization Report. Additionally, any other records or correspondence pertaining to the woodash program, or required by the Department should be kept, including file copies of landspreading site applications and complaints.

- B. Reporting: The Department finds that the applicant should report wood ash analytical results and soil test reports for background manganese to the Department within 30 days of receipt. The applicant is required to submit an annual report of utilization activities that meets the standards in 06-096 CMR 419(6)(C) to the Department by February 28th of each following year.

15. ALL OTHER

All other Findings of Fact, not modified by this Order, remain as set forth in Department Order #S-021177-SE-B-R, as amended.

BASED on the above Findings of Fact, and subject to the Conditions listed below, the Department makes the following CONCLUSIONS:

1. The proposed project will not pollute any water of the State, contaminate the ambient air, constitute a hazard to health or welfare, or create a nuisance, provided that:
 - A. Within 30 days of issuance of this Order, the applicant submits for Department review and approval an updated sampling and analytical work plan including identification and selection rationale of parameters to be analyzed for, the sample size and sampling frequency, and procedures for decontamination of sampling equipment; and
 - B. Prior to using any site for the land application of wood ash exceeding the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A, for manganese the applicant representatively sample and analyze the soil once for (background) manganese and report the results to the Department within thirty (30) days of receipt; and
 - C. At any site used for the land application of wood ash exceeding the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese:

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- (1) The SI is estimated in accordance with the calculations in 06-096 CMR 419, Appendix A(2)(C) and use of the site is limited such that the combined total of the SI plus the soil background concentration does not exceed the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese; and
 - (2) The useful life of the site is limited such that should the level of manganese increase, site life is adjusted downward to ensure that the SI plus the soil background concentration does not exceed the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese; and
 - D. The maximum application rate for wood ash does not exceed two (2) tons of CCE per acre per year if top-dressed, and three (3) tons of CCE if incorporated; and
 - E. Wood ash is applied at a rate based upon the liming requirements of the soil, as directed by soil test reports; and
 - F. The loading rate of the wood ash is based on the phosphorus uptake rate of the target crop, if that rate is more restrictive than the rate based on the liming requirements of the soil; and
 - G. The spreading of wood ash is limited to established agricultural sites; and
 - H. At any site without a site-specific license, the wood ash does not exceed the applicable screening standards in 06-096 CMR 419, Table 419.4 for heavy metals; and
 - I. The applicant does not distribute more wood ash to an end user than can be utilized at a site in that year; and
 - J. At any site without a site-specific license, wood ash is not stored for more than two (2) years.
2. The applicant has the financial and technical ability to develop the project in a manner consistent with State environmental standards.

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3. The applicant has made adequate provisions for traffic movement of all types into, out of, and within utilization sites.
4. The proposed project fits harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipalities or in neighboring municipalities.
5. The proposed facilities will be on soils types suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sedimentation.
6. The proposed facilities will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
7. The applicant has made adequate provisions for utilities including water supplies, sewerage facilities, solid waste disposal and roadways required for the project, and the proposed facilities will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipalities or area served by those services.
8. The activity will not unreasonably cause or increase the flooding of the areas or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES above noted application of BORALEX ASHLAND LP, SUBJECT TO THE ATTACHED CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached as Appendix A.
2. Within 30 days of issuance of this Order, the applicant shall submit for Department review and approval an updated sampling and analytical work plan including identification and selection rationale of parameters to be analyzed for, the sample size and sampling frequency, and procedures for decontamination of sampling equipment.
3. Prior to using any site for the land application of wood ash exceeding the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese the applicant shall representatively sample and analyze the soil once for (background) manganese.

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4. At any site used for the land application of wood ash exceeding the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese:
 - A. The SI shall be estimated in accordance with the calculations in 06-096 CMR 419, Appendix A(2)(C) and use of the site shall be limited such that the combined total of the SI plus the soil background concentration does not exceed the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese; and
 - B. The useful life of the site shall be limited such that should the level of manganese increase, site life is adjusted downward to ensure that the SI plus the soil background concentration does not exceed the (2,250 mg/kg) screening standard in 06-096 CMR 418, Appendix A for manganese.
5. The maximum application rate for wood ash shall not exceed two (2) tons of CCE per acre per year if top-dressed, and three (3) tons of CCE if incorporated.
6. Wood ash shall be applied at a rate based upon the liming requirements of the soil, as directed by soil test reports.
7. The loading rate of the wood ash shall be based on the phosphorus uptake rate of the target crop, if that rate is more restrictive than the rate based on the liming requirements of the soil.
8. The spreading of wood ash shall be limited to established agricultural sites.
9. At any site without a site-specific license, the wood ash shall not exceed the applicable screening standards in 06-096 CMR 419, Table 419.4 for heavy metals.
10. The applicant shall not distribute more wood ash to an end user than can be utilized at a site in that year.
11. At any site without a site-specific license, wood ash shall not be stored for more than two (2) years.
12. The applicant shall submit to the Department within thirty (30) days of receipt analytical results of wood ash and utilization site soil analysis reports for manganese.

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13. The applicant shall maintain records of wood ash analyses, soil sampling results, amounts and dates of wood ash spread or stored on various fields, the Department's Annual Ash Utilization Report, and any other records or correspondence pertaining to the wood ash utilization program, or required by the Department, including file copies of landspreading site applications and wood ash-related complaints.
14. The applicant shall submit to the Department by February 28th of each following year an annual report of utilization activities that meets the standards in 06-096 CMR 419(6)(C).

DONE AND DATED AT AUGUSTA, MAINE THIS 24TH DAY
OF JUNE, 2009.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

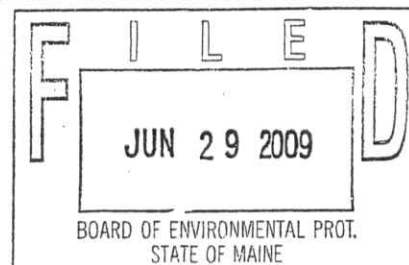
BY: Mr. [Signature] FOR
David P. Littell, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE APPEAL PROCEDURES.

Date of initial receipt of application: September 9, 2006

Date of application acceptance: October 2, 2006

Date filed with the Board of Environmental Protection



This Order prepared by Jay Duncan, Bureau of Remediation & Waste Management.

XJD60636/djp

Appendix A

STANDARD CONDITIONS TO ALL SOLID WASTE FACILITY LICENSES

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL. VIOLATIONS OF THE CONDITIONS UNDER WHICH A LICENSE IS ISSUED SHALL CONSTITUTE A VIOLATION OF THAT LICENSE, AGAINST WHICH ENFORCEMENT ACTION MAY BE TAKEN, INCLUDING REVOCATION.

1. **Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the licensee. Any consequential variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
2. **Compliance with All Applicable Laws.** The licensee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
3. **Compliance with All Terms and Conditions of Approval.** The licensee shall submit all reports and information requested by the Department demonstrating that the licensee has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. **Transfer of License.** The licensee may not transfer the solid waste facility license or any portion thereof without approval of the Department.
5. **Initiation of Construction or Development Within Two Years.** If the construction or operation of the solid waste facility is not begun within two years of issuance or within 2 years after any administrative and judicial appeals have been resolved, the license lapses and the licensee must reapply to the Department for a new license unless otherwise approved by the Department.
6. **Approval Included in Contract Bids.** A copy of the approval must be included in or attached to all contract bid specifications for the solid waste facility.
7. **Approval Shown to Contractors.** Contractors must be shown the license by the licensee before commencing work on the solid waste facility.
8. **Background of key individuals.** A licensee may not knowingly hire as an officer, director or key solid waste facility employee, or knowingly acquire an equity interest or debt interest in, any person convicted of a felony or found to have violated a State or federal environmental law or rule without first obtaining the approval of the Department.
9. **Fees.** The licensee must comply with annual license and annual reporting fee requirements of the Department's rules.

ADDITIONAL STANDARD CONDITIONS FOR
SOLID WASTE DISPOSAL FACILITIES

10. Recycling and Source Reduction Determination for Solid Waste Disposal Facilities. This condition does not apply to the expansion of a commercial solid waste disposal facility that accepts only special waste for landfilling.

The solid waste disposal facility shall only accept solid waste that is subject to recycling and source reduction programs, voluntary or otherwise, at least as effective as those imposed by 38 MRSA Chapter 13.

11. Deed Requirements for Solid Waste Disposal Facilities. Whenever any lot of land on which an active, inactive, or closed solid waste disposal facility is located is being transferred by deed, the following must be expressly stated in the deed:

- A. The type of facility located on the lot and the dates of its establishment and closure.
- B. A description of the location and the composition, extent, and depth of the waste deposited.
- C. The disposal location coordinates of asbestos wastes must be identified.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: January 2004

Contact: (207) 287-2811

SUMMARY

One of two methods is available to an aggrieved person for appealing a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner -- in an administrative process before the Board of Environmental Protection ("Board") or a judicial process before Maine's Superior Court. This FACT SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, will assist aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeals. A failure to file an appeal within the identified time periods will result in the Commissioner's decision becoming final.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24.

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes and photocopies are not acceptable. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

An appeal must contain the following information:

1. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
2. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
3. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
4. *All the matters to be contested.* As part of the appeal, the Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.
